

### **REMARKS/ARGUMENTS**

Claims 104-126 and 128-130 are pending in the application. Claims 104-126 and 128-130 stand rejected.

#### **Response to Interview Summary**

Applicants would like to thank the Examiner for the courteous in person interview on February 13, 2006. In the interview, Applicants' representative and the Examiner agreed that the Brimhall '993 reference did not read on Applicant's invention and that the associated rejection should be withdrawn.

#### **Drawings rejected under 37 CFR 1.83(a)**

The drawings have been objected to under 37 CFR 1.83(a), indicating that the drawings must show every feature of the invention specified in the claims. The Examiner specifically indicates that the sound conduction channel and directional feature recited in claim 129 are not present in the drawings. Such is not the case, both elements are present in the drawings. Fig. 11 shows a sound conduction channel 45 and directional feature 86, which are also described in the Specification at page 22, lines 1-1. Accordingly, Applicants respectfully submit that no corrected drawings are required and respectfully request withdrawal of the objection.

#### **Rejections under 35 USC § 102**

Claim 130 is rejected under 35 U.S.C. 102(b) as being anticipated by Ward (U.S. 5,201,007). Applicants respectfully traverse the rejection in that Ward does not teach all elements of Applicant's invention. However, in order prosecution, and without acquiescing to the propriety of Examiner's rejections, independent claim 130 has been amended to overcome the rejection. Claim 130 now recites that the "tube portion has a skeletal support structure with sufficient axial rigidity to maintain patency of the tube portion when the tube portion is inserted and rotated within the ear canal." Support for this amendment can be found in the Specification,

claims and drawings as filed, see the Specification, e.g., at page 21, lines 9-21; and Figs. 4 and 5. Ward does not teach or suggest such a skeletal support structure. Accordingly, withdrawal of the rejection is respectfully requested.

**Rejections under 35 USC § 103**

Claim 104-126, 128 and 129 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward (U.S. 5,201,007) in view of Fretz (U.S. 7,027,608). Applicants respectfully traverse this rejection for several reasons. First, the Examiner points to no teaching, suggestion or motivation to combine Ward with Fretz in the manner claimed as is required by law. See *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is **rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.**" emphasis added).

Second, there are a number of elements of the claimed invention which are simply not present in the combination. Applicants will address these in turn. In regard to tube 82, Ward provides no teaching whatsoever that tube 82 is a seal, its only described as "a second hollow tube" See Ward, Col 6, lines 40-64.

In regard to claim 107, no where does Fretz teach its tubes have generic configurations and sizes to accommodate a variety of ear canal sizes and shapes. Applicants have read the section the Examiner refers to in Fretz as allegedly having this teaching and can find no mention of tubes having different sizes or shapes to accommodate a variety of sizes and shape of ear canal. While the Fretz's may indicate the tubes have different lengths there is no mention of variation in shape or diameter, and no teaching of how the tubes can accommodate a variety of ear canal sizes in shapes. In particular, given that Fretz does not mention the variation in the shape of its plurality of tubes, those tubes can not be expected to accommodate a variety of ear canal shapes.

In regard to claim 109, the Examiner states that "Ward and Fretz appear to teach the sound conduction tube is at least 8 mm in length." However, no where does the office action

indicate where that length is taught in Fretz or Ward and in fact, no where does Ward or Fretz specifically teach such a length.

In regard to the inside seal diameter in claim 110, the Examiner alleges that Ward teaches that this is less than 2 mm. Ward provides no such teaching. The Examiner would appear to have mistaken the dimensions provided for the edge thickness 72 of Wards tip 70 for seal diameter. Ward states "that suitable edge thickness 72 is approximately 0.05 to 2 millimeters" Ward at Col 5, line 33-34. However, Ward provides no mention whatsoever of a seal thickness being less 2 mm.

In regard to the sound boost limitation in claim 111, Ward provides no teaching for this limitation whatsoever. Instead, the Examiner makes the intuitive leap that because Ward teaches that high frequency acoustic feedback can be prevented, that this somehow reads on a "sound conduction tube is constructed and adapted to provide a boost for conducted sounds at the high range of audiometric frequencies" See the Office Action at page 6. The Examiner provides no reasoning for this intuitive leap and none is taught or even suggested in Ward.

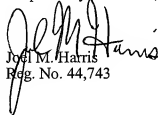
However in order to expedite prosecution, and without acquiescing to the propriety of the Examiner's rejections, Applicants have amended independent claims 104, 128, 129 to over come the rejection. Claims 104 and 128 now recite that the " sound conduction tube has a skeletal support structure with sufficient axial rigidity to maintain patency of the sound conduction tube when the tube portion is inserted and rotated within the ear canal." Neither Ward nor Fretz teach or suggest such a skeletal support structure. Accordingly, withdrawal of the rejection is respectfully requested with regard to claim 128 and 104 and the respective dependant claims of claim 104.

Claim 129 now recites that the first and second sound conduction channels are non coaxially positioned. Neither Ward nor Fretz teach or suggest such a configuration. In particular, all configurations of Ward are necessarily coaxial. See Ward at Col 6, lines 40-43. Accordingly, withdrawal of the rejection is respectfully requested.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Respectfully submitted,



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